

ATTACHMENT A

Armour Independent Telephone Company  
Baltic Telecom Cooperative  
Beresford Municipal Telephone Company  
Bridgewater-Canistota Independent Telephone  
Brookings Municipal Telephone/Swiftel Communications  
Dakota Cooperative Telecommunications, Inc.  
East Plains Telecom, Inc.  
Fort Randall Telephone Company  
Interstate Telecommunications Cooperative, Inc.  
Jefferson Telephone Company  
Kadoka Telephone Company  
Kennebec Telephone Company  
McCook Cooperative Telephone Company  
Midstate Communications, Inc  
Mount Rushmore Telephone Company  
RC Communications, Inc.  
Roberts County Telephone Cooperative Assn.  
Sanborn Telephone Cooperative  
Sancom. Inc.  
Sioux Valley Telephone Company  
Splitrock Telecom Cooperative, Inc.  
Stockholm-Strandburg Telephone Co  
Union Telephone Company  
Valley Telecommunications Cooperative  
Western Telephone Company  
West River Cooperative Telephone Company

BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of United States Cellular Corporation for Designation  
as an Eligible Telecommunications Carrier in Wisconsin

8225-TI-102

**FINAL DECISION**

This is the final decision in this proceeding to determine whether to designate United States Cellular Corporation (US Cellular) as an Eligible Telecommunications Carrier (ETC), pursuant to 47 U.S.C. § 214(e)(2) and Wis. Admin. Code § 160.13. Designation as an ETC *makes* a provider eligible to receive universal service fund (USF) monies.

Introduction

US Cellular filed an application for ETC designation in November 2001. Staff requested clarification of some parts of the application, and U.S. Cellular filed an amendment to the application on January 14, 2002. The Commission issued a Notice of Proceeding, Investigation and Assessment of Costs and Request for Comments on March 5, 2002. The applicant, and various parties to the docket, jointly submitted a request to delay the filing of comments to allow the applicant to respond to staff data requests and to allow the other parties an opportunity to review those responses. That request was granted. Parties filed comments on July 1, 2002, and reply comments on July 22, 2002. The Commission discussed this matter at its November 7, 2002 open meeting.

US Cellular requested ETC designation for the southern half of Wisconsin, plus the Door County Peninsula. The territories for which ETC designation is requested are served by Ameritech, Verizon and several rural telecommunications carriers.

### **Findings of Fact**

1. The wireless industry, its customary practices, its usual customer base and US Cellular's desire not to obtain state USF money create an unusual situation.

2. It is reasonable to adopt different ETC eligibility requirements and obligations for US Cellular.

3. It is reasonable to require US Cellular to meet only the federal requirements for ETC status in order to be eligible for ETC designation.

4. It is reasonable to relieve US Cellular From ETC obligations other than those imposed under federal law.

5. It is reasonable to require that US Cellular not apply for state USF funds and that if it ever does, all state requirements for and obligations of ETC status shall again be applicable to it.

6. US Cellular meets the federal requirements for ETC designation.

7. It is in the public interest to designate US Cellular as an ETC in certain areas served by rural telephone companies.

8. It is reasonable to grant US Ccellular ETC status in the non-rural wire centers indicated in its application, to the extent that the wire centers are located within the state.

9. It is reasonable to grant US Cellular ETC status in the areas for which it has requested such designation where the request includes the entire territory of a rural telephone company, to the extent such areas are located withiii the state.

10. It is reasonable to grant US Cellular ETC status in the areas for which it has requested such designation where the request does not include the entire territory of a rural

telephone company, to the extent the areas are located within the state, conditioned upon the FCC approving the use of the smaller areas.

### **Conclusions of Law**

The Commission has jurisdiction and authority under Wis. Stats. §§ 196.02, 196.218 and 196.395 Wis. Admin. Code ch. 160, 47 U.S.C. §§ 214,254, and other pertinent provisions of the Telecommunications Act of 1996, to make the above Findings of Fact and to issue this Order.

### **Opinion**

ETC status was created by the Federal Communications Commission (“FCC”), and codified in 47 U.S.C. § 214(e)(2). Under FCC rules, the state commissions are required to designate providers as ETCs. 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.201(b). Designation as an ETC is required if a provider is to receive federal universal service funding. ETC designation is also required to receive funding from some, but not all, state universal service programs.

The FCC established a set of minimum criteria that all ETCs must meet. These are codified in the federal rules. 47 U.S.C. § 214(e)(1), 47 C.F.R. § 54.101(a). The 1996 Telecommunications Act states that “States may adopt regulations not inconsistent with the Commission’s rules to preserve and advance universal service.” 47 U.S.C § 254(f). A court upheld the states’ right to impose additional conditions on ETCs in *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5<sup>th</sup> Cir. 1999). While states must designate multiple ETCs if more than one provider meets the requirements and requests that status in a non-rural area, it must determine that it is in the public interest before designating more than one ETC in a rural area. 47 C.F.R. § 54.201, The Commission has already designated one ETC in each rural area.

In the year 2000, the Commission promulgated rules covering ETC designations and requirements in Wisconsin Wis. Admin. Code § PSC 160.13. Those rules govern the process

for ETC designation and set forth a minimum set of requirements for providers seeking ETC designation from the Commission. The application filed by US Cellular asks that it be designated as an ETC for federal purposes only. It states that it is not seeking designation as an ETC for state purposes and, therefore, is not required to meet the additional state requirements

States must examine the federal requirements, but are allowed to create additional requirements. Wisconsin has done so. The Commission's requirements for ETC designation clarify and expand upon the more basic FCC rules. There is no provision in the rule for designation as an ETC for federal purposes only. If a provider seeks to be designated as an ETC, it must follow the procedures and requirements in Wis. Admin. Code § PSC 160.13 and, if such a designation is granted, that designation serves to qualify the provider for both state and federal universal service funding. However, Wis. Admin. Code § 160.01(2)(b) provides that:

Nothing in this chapter shall preclude special and individual Consideration being given to exceptional or unusual situations and upon due investigation of the facts and circumstances involved, the adoption of requirements as to individual providers or services that may be lesser, greater, other or different than those provided in this chapter.

**US** Cellular's request for ETC status presents an unusual situation. The wireless industry, its customary practices, and its usual customer base are quite different than those of wireline companies. Additionally, US Cellular has stated that it has no desire to obtain state USF money. The Commission finds that under the particular circumstances of this case, it is reasonable to adopt different ETC requirements for **US** Cellular to meet, and to grant ETC status to **US** Cellular with certain limitations.

Because US Cellular only wishes to obtain federal USF support, the Commission shall adopt the federal requirements for ETC status as the requirements that **US** Cellular must meet to obtain ETC status. The federal requirements are found in 47 U.S.C. § 214(c)(1), 47 C.F.R.

§§ 54.101(a), 54.405 and 54.411. Further, the Commission relieves US Cellular from ETC obligations other than those imposed under federal law. However, since US Cellular will not be subject to the state requirements and state obligations, the Commission requires that US Cellular not apply for state USF money. If US Cellular ever does apply for state USF money, then all of the state requirements for and obligations of ETC status shall again be applicable to US Cellular.<sup>1</sup>

The Commission finds that US Cellular has met the requirements for ETC designation; it will offer supported service to all customers in its designation areas and will advertise these services. In the FCC Declaratory Ruling *In the Matter of Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, FCC 00-248 (released 8/10/00), **par.** 24 (South Dakota Decision) the FCC has stated:

A new entrant can make a reasonable demonstration to the state commission of its capability and commitment to provide universal service without the actual provision of the proposed service. There are several possible methods for doing so, including, but not limited to: (1) a description of the proposed service technology, as supported by appropriate submissions; (2) a demonstration of the extent to which the carrier may otherwise be providing telecommunications services within the state; (3) a description of the extent to which the carrier has entered into interconnection and resale agreements; or, (4) a sworn affidavit signed by a representative of the carrier to ensure compliance with the obligation to offer and advertise the supported services.

If this is sufficient for a new entrant, it would seem to be even more so for someone who has already started to serve portions of the exchanges. US Cellular submitted an affidavit ensuring compliance and, as mentioned earlier, is not only providing service in other areas of the state but also in parts of the areas for which it has requested ETC status.

<sup>1</sup> Thus, for example, while US Cellular must offer a federally acceptable Lifeline program, it can only request Lifeline USF support at the federal level.

The Commission finds that US Cellular meets the requirement to offer service to all requesting customers. It has stated in its application and comments that it will do so. It has submitted an affidavit to this effect with its application. Much was made of US Cellular's language stating that it will make "commercially reasonable" efforts to improve coverage and will expand service if it is "economically reasonable" to do so. Many commenters argued that this shows that the applicant will not meet the same standard that is applied to wireline providers. However, this is a case where "the devil is in the details." It is true that the purpose of universal service programs is to ensure that customers who might not otherwise be served at affordable rates by a competitive market still receive service. However, like for wireline companies, access to high cost assistance is what helps ensure that service is provided. For US Cellular, access to high cost assistance is exactly what will make expanding service to customers requesting service in the areas for which it is designated as an ETC "commercially reasonable" or "economically feasible". **As** the FCC has said:

**A** new entrant, once designated as an ETC, is required, as the incumbent is required, to extend its network to serve new customers upon reasonable request, South Dakota Decision, par. 17.

US Cellular, like wireline ETCs, must fulfill this mandate, and access to high cost funding is what will help make doing so possible. The issue of "dead spots" is not significantly different from a LEC ETC that does not have its own lines in a portion of an exchange, perhaps a newly developed area. After obtaining a reasonable request for service, the LEC is required to find a way to offer service, either through extending its own facilities or other options. So too, US

Cellular must be given a reasonable opportunity to provide service to requesting customers, whether through expansion of its own facilities or some other method.<sup>2</sup>

US Cellular has also stated in its affidavit, application and comments that it will advertise the designated services as required under 47 U.S.C. § 214(e)(1)(B), including the availability of low income programs

Other objections to US Cellular's designation focus on an alleged inability to meet certain additional state requirements in Wis. Admin. Code § PSC 160.13. These are moot, however, since the Commission has adopted different requirements for US Cellular,

Some of the exchanges for which US Cellular seeks ETC status are served by non-rural ILECs Ameritech and Verizon. Under Wis. Admin. Code § 160.13(3) and 47 U.S.C. § 251(e)(2), the Commission must designate multiple ETCs in areas served by such non-rural companies. However, the Commission may only designate multiple ETCs in an area served by a rural company if designating more than one ETC is in the public interest. Some of the exchanges for which US Cellular seeks ETC status are served by rural telephone companies.

The Commission finds that designating US Cellular as an additional ETC in these areas is in the public interest. In its determination, the Commission is guided by the Wis. Stat §196.03(6) factors to consider when making a public interest determination:

- (a) Promotion and preservation of competition consistent with ch. 133 and s. 196.210.
- (b) Promotion of consumer choice.
- (c) Impact on the quality of life for the public, including privacy considerations.
- (d) Promotion of universal service.
- (e) Promotion of economic development, including telecommunications infrastructure deployment.
- (f) Promotion of efficiency and productivity.

---

<sup>2</sup> US Cellular mentions meeting this requirement through use of its own facilities, use of unbundled network elements and/or resale. If it plans to resell wireline service it will, of course, have to apply to this Commission for certification as a reseller or competitive local exchange carrier.



- (g) Promotion of telecommunications services in geographical areas with diverse income or racial populations.

The Commission finds that designating US Cellular as an ETC in areas served by rural companies will increase competition in those areas and, so, will increase consumer choice. While it is true that US Cellular is currently serving in at least some of these areas, the availability of high cost support for infrastructure deployment will allow US Cellular to expand its availability in these areas. Further, designation of another ETC may spur ILEC infrastructure deployment and encourage further efficiencies and productivity gains. Additional infrastructure deployment, additional consumer choices, the effects of competition, the provision of new technologies, a mobility option and increased local calling areas **will** benefit consumers and improve the quality of life for affected citizens of Wisconsin. As a result, the Commission finds that it is in the public interest to designate US Cellular as an ETC in the areas served by rural telephone companies for which it has requested such designation.

The areas for which US Cellular is granted ETC status vary. Wis. Admin. Code § 160.13(2) states that the areas in which a provider shall be designated as an ETC depend on the nature of the ILEC serving that area. If the ILEC is a non-rural telephone company, the designation area is the ILEC's wire center. The FCC has urged states not to require that competitive ETCs be required to offer service in the entire territory of large ILECs. It has found that such a requirement could be a barrier to entry. *Report and Order in the Matter of Federal-State Joint Board on Universal Service*, FCC 97-157 (released 5/8/97) pars. 176-177 (First Report and Order). Wisconsin's rule provision resolves this federal concern. **As** a result, US Cellular is granted ETC status in the Ameritech and Verizon wire centers for which it requested such status. To the extent that such wire centers are located within the state.

Wis. Admin. Code § 160.13(2) provides that if the ILEC is a rural telephone company the ETC designation area is different. For an area served by a rural telephone company, the designation area is generally the entire territory (study area) of that rural company. A smaller designation area is prohibited unless the Commission designates and the FCC approves a smaller area. 47 C.F.R. § 54.207(b). US Cellular's application contained a list of rural telephone company areas for which it requested ETC status. The list contained a number of inaccuracies which make determining whether it is seeking that status in the entire territory of some non-rural companies difficult. The Commission has prepared an attachment showing the rural areas for which it believes US Cellular is seeking ETC status. If this list is not accurate, US Cellular is ordered to submit to the Commission a revised list, in the same format as the attachment to this order, by January 2, 2003.

The Commission also grants ETC status to US Cellular in the areas for which it is seeking designation for the entire territory of a rural telephone company, to the extent that such exchanges are located within the state. Finally, where US Cellular is asking for ETC designation in some, but not all, parts of the territory of a rural telephone company, the Commission conditionally grants ETC status in the areas for which US Cellular has requested such designation, to the extent that such exchanges are located within the state. However, US Cellular must apply to the FCC for approval of the use of a smaller area in such a designation. 47 C.F.R. § 54.207(c)(1). If the FCC approves use of the smaller area, then US Cellular's ETC status for the smaller area(s) becomes effective. If the FCC does not approve use of the smaller area(s), then US Cellular's conditional ETC status for such an area is void. In such a case, if US Cellular determines that it then wants to apply for ETC status in the entire territory of the rural company, it may submit a new application requesting such designation.

The Commission grants this conditional status after having considered the changing market and the reason why the limitations on ETC designation in rural areas was created. Originally there were concerns about “cherry picking” or “cream skimming.” At that time the USF support was averaged across all lines served by a provider within its study area. The per line support was the same throughout the study area. The concern was that competitive companies might ask for ETC designation in the parts of a rural company’s territory that cost less to serve. It could thereby receive the averaged federal high cost assistance while only serving the low cost areas of the territory, while the ILEC received federal high cost assistance but had to serve the entire territory, including the high cost areas. First Report and Order, par. 189. **As** a result, the FCC found that, unless otherwise approved by both the state and the FCC, a competitor seeking ETC status in the territory of a rural company must commit to serving the entire territory. First Report and Order, par. 189.

However, since that time the USF funding mechanisms have changed. Currently, a competitive ETC gets the same amount of federal high cost assistance per line as the ILEC. An ILEC has the option to target the federal high cost assistance it receives so that it receives more USF money per line in the parts of the territory where it costs more to provide service, and less federal USF money in the parts of the territory where it costs less to provide service. *In the Matter of Multi-Association Group (MAG) Plan*, FCC 01-157 (released 5/23/01), par. 147. (MAG Order) Since the competitive ETC receives the same per line amount as the ILEC, if it chooses to only serve the lower cost parts of the territory then it receives only the lower amount of federal USF money. **As** a result, as recognized by the FCC, the concerns about “cherry picking” and “cream skimming” are largely moot. *In the Matter of Reconsideration of Western*

*Wireless Corporation's Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, FCC 01-311 (released 10/16/01), par. 12.

In the MAG Order, rural telephone companies were given the opportunity to choose a disaggregation and targeting method or to not disaggregate and target USF support. MAG Order, pars. 147-154. Companies were allowed to choose one of three targeting paths. Some of the companies in whose territory US Cellular is seeking ETC designation chose Path One (no targeting) and some chose Path Three (targeting). If a competitive ETC is named in all or part of the service territory of a rural company, that company may ask the Commission to allow it to choose another Path. The FCC believed that state involvement in path changes gave competitors some certainty as to the amount of per line support available while preventing a rural company from choosing or moving to a different path for anti-competitive reasons. **MAG** Order, par. 153. Some of the companies in whose territory US Cellular is seeking ETC designation have disaggregated and targeted USF support, and some have not. However, the Commission may allow a company to change paths when a competitive ETC is designated in a rural company's territory.

#### Order

1. US Cellular is granted ETC status in the non-rural wire centers indicated in its application, to the extent the wire centers are located within the state.
2. US Cellular is granted Cellular ETC status in the areas for which it has requested such designation where the request includes the entire territory of a rural telephone company, to the extent the areas are located within the state.

3. US Cellular is granted ETC status in the areas for which it has requested such designation where the request does not include the entire territory of a rural telephone company, to the extent the areas are located within the state, conditioned upon the FCC approving the use of the smaller areas.

4. US Cellular shall file a revised list of rural areas for which it is seeking ETC status by January 2, 2003 if the list attached to this order is inaccurate. The revised list shall use the same format as the attachment.

5. US Cellular must request that the FCC approve the use of an area smaller than the entire territory of certain rural telephone companies (listed in an attachment to this order) when granting ETC status in those areas.

6. If the FCC does not approve the use of areas smaller than the entire territory of a rural telephone company when granting ETC status in those areas, then the conditional grant of ETC status in this order is void.

7. US Cellular shall not apply for state USF support. If it ever does file for such support the state eligibility requirements for and obligations of ETC status shall immediately apply to it.

8. Jurisdiction is maintained.

Dated at Madison, Wisconsin,

By the Commission:

\_\_\_\_\_  
Lynda L. Dorr  
Secretary to the Commission

PRJ:g:\order\pending\8225-TI-102  
See attached Notice of Appeal Rights

Notice of Appeal Rights

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in Wis. Stat. § 227.53. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in Wis. Stat. § 227.01(3), a person aggrieved by the order has the further right to file one petition for rehearing as provided in Wis. Stat. § 227.49. The petition must be tiled within 20 days of the date of mailing of this decision.

If this decision is an order after rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not an option.

This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 9/28/98